

Assembly Bill No. 2737

CHAPTER 554

An act to amend Sections 121060 and 121065 of, and to add Section 121060.1 to, the Health and Safety Code, relating to communicable disease.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2737, Feuer. Communicable disease: involuntary testing.

Existing law authorizes a court to order the withdrawal of blood from any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter, or emergency medical personnel for medically accepted indications of exposure to or infection by the acquired immune deficiency syndrome (AIDS) virus, AIDS-related conditions, and those communicable diseases for which medically approved testing is readily and economically available as determined by the court.

Existing law requires copies of the test results to be sent to the defendant or minor, among other specified persons. Existing law authorizes the peace officer, firefighter, emergency medical personnel or the employing agency, officer, or entity to petition the court for this order.

This bill would, instead, authorize a court to order the withdrawal of blood for the above-described purposes from any arrestee whenever a peace officer, firefighter, or emergency medical personnel is exposed to an arrestee's blood or bodily fluids, as defined, while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties. The bill would require a licensed health care provider, prior to filing a petition with the court, to first make a good faith effort to obtain a voluntary informed consent in writing before filing the petition. The bill would also authorize the petition to be filed ex parte. The bill would limit the diseases for which testing is required, to HIV, hepatitis B, hepatitis C. By expanding the duties of local officials, this bill would impose a state-mandated local program.

This bill would require the person whose sample was tested to be advised that he or she will be informed of hepatitis B, and hepatitis C, and HIV test results only if he or she wishes to be so informed.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 121060 of the Health and Safety Code is amended to read:

121060. (a) Any peace officer, firefighter, or emergency medical personnel who, while acting within the scope of his or her duties, is exposed to an arrestee's blood or bodily fluids, as defined in Section 121060.1, shall do the following:

(1) Prior to filing a petition with the court, a licensed health care provider shall notify the arrestee of the bloodborne pathogen exposure and make a good faith effort to obtain the voluntary informed consent of the arrestee or the arrestee's authorized legal representative to perform a test for Human Immunodeficiency Virus (HIV), hepatitis B, and hepatitis C. The voluntary informed consent shall be in writing. Once consent is given in writing, the arrestee shall provide three specimens of blood for testing as provided in this chapter.

(2) If voluntary informed consent is not given in writing, the affected individual may petition, ex parte, the court for an order requiring testing as provided in this chapter. The petition shall include a written certification by a health care professional that an exposure, including the nature and extent of the exposure, has occurred.

(b) The court shall promptly conduct a hearing upon a petition filed pursuant to paragraph (2) of subdivision (a). If the court finds that probable cause exists to believe that a possible bloodborne pathogen exposure, as defined in Section 121060.1, took place between the arrestee and the peace officer, firefighter, or emergency medical personnel, as specified in this section, the court shall order that the arrestee provide three specimens of blood for testing as provided in this chapter.

(c) (1) Except as provided in paragraph (2), copies of the test results shall be sent to the arrestee, each peace officer, firefighter, and emergency medical personnel named in the petition and his or her employing agency, officer, or entity, and if the arrestee is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained.

(2) The person whose sample was tested, shall be advised that he or she will be informed of the hepatitis B, hepatitis C, and HIV test results only if he or she wishes to be so informed. If the person consents to be informed of the hepatitis B, hepatitis C, and HIV test results, then he or she shall sign a form documenting that consent. The person's refusal to sign that form shall be construed to be a refusal to be informed of the hepatitis B, hepatitis C, and HIV test results.

(3) Except as otherwise provided under this section, all confidentiality requirements regarding medical records shall apply to the test results obtained.

SEC. 2. Section 121060.1 is added to the Health and Safety Code, to read:

121060.1. (a) For purposes of Section 121060, “bloodborne pathogen exposure” means a percutaneous injury, including, but not limited to, a needle stick or cut with a sharp object, or the contact of nonintact skin or mucous membranes with any of the bodily fluids identified in subdivision (b), in accordance with the most current bloodborne pathogen exposure definition established by the federal Centers for Disease Control and Prevention.

(b) “Bodily fluids” means any of the following:

- (1) Blood.
- (2) Tissue.
- (3) Mucous containing visible blood.
- (4) Semen.
- (5) Vaginal secretions.

SEC. 3. Section 121065 of the Health and Safety Code is amended to read:

121065. (a) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this chapter.

(b) The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted thereon for medically accepted indications of exposure to or infection by HIV, hepatitis B, and hepatitis C.

(c) (1) The test results shall be sent to the designated recipients with the following disclaimer:

“The tests were conducted in a medically approved manner. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate. Recipients of these test results are subject to existing confidentiality protections for any identifying information about HIV, hepatitis B, or hepatitis C test results. Medical information regarding the HIV, hepatitis B, or hepatitis C status of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law.”

(2) The exposed individual shall also be informed of the penalties for disclosure for which he or she would be personally liable pursuant to Section 120980.

If the person subject to the test is a minor, copies of the test result shall also be sent to the minor’s parents or guardian.

(d) The court shall order all persons, other than the test subject, who receive test results pursuant to Sections 121055, 121056, or 121060, to maintain the confidentiality of personal identifying data relating to the test

results except for disclosure that may be necessary to obtain medical or psychological care or advice.

(e) The specimens and the results of tests ordered pursuant to Sections 121055, 121056, and 121060 shall not be admissible evidence in any criminal or juvenile proceeding.

(f) Any person performing testing, transmitting test results, or disclosing information pursuant to the provisions of this chapter shall be immune from civil liability for any action undertaken in accordance with the provisions of this chapter.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.